



STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced	2/20/01	Bill No:	SB 306
Tax:	Property	Author:	Poochigian
Board Position:	Support	Related Bills:	SB 933 (Ch. 352, 1999)

BILL SUMMARY

This bill would provide that the new construction exclusion for underground storage tanks and reconstructed structures applies to construction completed after December 31, 1988.

ANALYSIS

Current Law

The law generally requires that when property undergoes “new construction” the property’s assessed value be increased by the value added. When the new construction involves replacing existing improvements, the value attributable to those pre-existing improvements is first deducted from the property’s assessed value before adding the value for its replacement. There are some improvements that are excluded from the definition of “new construction.” In these cases, while the improvements may increase the value of property, the additional value is not added to the property’s assessed value and therefore the incremental value is exempt from property tax.

Revenue and Taxation Code Section 70 (e) exempts from the definition of new construction as “normal maintenance and repair¹” the improvement, upgrade, or replacement of an underground storage tank undertaken to comply with federal, state, and local regulations on underground storage tanks. In addition, if, in the course of this work, a structure (or portion thereof) was reconstructed, the timely reconstruction of the structure is exempt from new construction as normal maintenance and repair provided the replacement structure (or portion thereof) is substantially equivalent to the prior structure in size, utility, and function. Subdivision (e) was added to the Revenue and Taxation Code in 1999 by SB 933 (Ch. 352, Poochigian).

¹ The phrase “normal maintenance and repair” is found in Board of Equalization regulations on new construction. Property Tax Rule 463(b) (4) excludes from the definition of the new construction, “the construction or reconstruction performed **for the purpose of normal maintenance and repair**, e.g., routine annual preparation of agricultural land or interior or exterior painting, replacement of roof coverings or the addition of aluminum siding to improvements or the replacement of worn machine parts.”

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Proposed Law

This bill would amend Revenue and Taxation Code Section 70 (e) to provide that the new construction exclusion for underground storage tanks and reconstructed structures applies to work performed after December 31, 1988. Additionally, an uncodified section of law provides that this amendment is a declaration of existing law.

It also would define the term "tank" and "underground storage tank" by reference to Section 25299.24 of the Health and Safety Code, which provides

"Tank", "underground storage tank," "underground tank system," and "tank system" have the same meaning as defined in Chapter 6.7 (commencing with Section 25280), except that "tank", "underground storage tank," "underground tank system," and "tank system" **mean only those tanks that are defined as petroleum underground storage tanks** under the federal act.

The relevant definitions in Chapter 6.7 of the Health and Safety code provide:

Section 25281. For purposes of this chapter, the following definitions apply:

* * *

(l) "Pipe" means any pipeline or system of pipelines which is used in connection with the storage of hazardous substances and which is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

* * *

(t) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials (e.g. wood, concrete, steel, plastic) which provides structural support.

* * *

(x) (1) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground. **"Underground storage tank" does not include any of the following:**

(A) A tank with a capacity of **1,100 gallons** or less which is **located on a farm and which stores motor vehicle fuel** used primarily for agricultural purposes and not for resale.

(B) A tank which is located on a farm or at the residence of a person, which has a capacity of **1,100 gallons** or less, and which stores **home heating oil** for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. Sumps which are a part of a monitoring system required under Section 25291 or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

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(D) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

* * *

(y) "Underground tank system" or "tank system" means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

* * *

25281.5. (a) Notwithstanding subdivision (l) of Section 25281, for purposes of this chapter "pipe" means all parts of any pipeline or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

- (1) An interstate pipeline subject to 49 Code of Federal Regulations, Part 195.
- (2) An intrastate pipeline subject to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code.
- (3) Unburied delivery hoses, vapor recovery hoses, and nozzles which are subject to unobstructed visual inspection for leakage.
- (4) Vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision (x) of Section 25281, "underground storage tank" does not include either of the following:

- (1) Vent lines, vapor recovery lines, and fill pipes that are designed to prevent, and do not hold, standing fluid in the pipes or lines.
- (2) Unburied fuel delivery piping at marinas if the owner or operator conducts daily visual inspections of the piping and maintains a log of inspection results for review by the local agency.

The exclusion provided by this paragraph shall not be applicable if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel delivery piping at marinas.

In General

Property Tax System. Article XIII, §1 of the California Constitution provides that all property is taxable, at the same percentage of "fair market value," unless specifically exempted, or authorized for exemption, within the Constitution. Article XIII A, §2 of the California Constitution defines "fair market value" as the assessor's opinion of value for the 1975-76 tax bill, or, thereafter, the appraised value of property when purchased, newly constructed, or a change in ownership has occurred. This value is generally referred to as the "base year value". Barring actual physical new construction or a change in ownership, annual adjustments to the base year value are limited to 2% or the rate of inflation, whichever is less. Article XIII A, §2 provides for certain exclusions

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from the meaning of “change in ownership” and “newly constructed” as approved by voters via constitutional amendments.

New Construction. The constitution does not define the term “new construction.” Revenue and Taxation Section 70 defines it, in part, to mean:

- Any addition to real property, whether land or improvements (including fixtures), since the last lien date.
- Any alteration of land or improvements (including fixtures) since the lien date that constitutes a “major rehabilitation” or that converts the property to a different use. A major rehabilitation is any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture.

With respect to any new construction, the law requires the assessor to determine the added value upon completion. The value is established as the base year value for those specific improvements and is added to the property’s existing base year value. When new construction replaces existing improvements, the value attributable to those preexisting improvements is deducted from the property’s existing base year value. (R&T Code §71)

New Construction Exclusions. Over the years, Article XIII A, §2 of the Constitution has been amended to specifically exclude certain types of work from assessment as “new construction.” Consequently, while these improvements may increase the value of the property, the additional value is exempt from taxation.

Proposition	Election Ballot	Subject	R&T Code
8	November 1978	Reconstruction After Disaster	§70(c)
7	November 1980	Solar Energy Systems	§73
23	June 1984	Seismic Safety – Unreinforced Masonry Structures	§70(d)
31	November 1984	Fire Safety Systems	§74
110	June 1990	Disabled Accessibility Improvements – Homes	§74.3
127	November 1990	Seismic Safety - Retrofitting & Hazard Mitigation	§74.5
177	June 1994	Disabled Accessibility Improvements – All Property	§74.6
1	November 1998	Reconstruction After Environmental Contamination	§69.4

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Background

The following information is taken from a California Environmental Protection Agency's News Release dated December 3, 1998.

Owners and operators of USTs across the United States had until December 22, 1998 to comply with federal and state requirements to upgrade or replace tanks and piping installed before 1984 when California's UST program and more stringent tank requirements came into effect. This deadline was initially established by the U.S. Environmental Protection Agency 10 years ago to allow tank owners sufficient time to comply with the upgrade requirements. In California, State law prohibits the delivery of petroleum products to USTs after January 1, 1999 if those USTs have not been upgraded or replaced by the December 1998 deadline.

Local agencies regulate approximately 61,000 tanks throughout California. Of those, 55,000 are petroleum tanks and 6,000 are hazardous substance tanks. It is estimated that approximately 29,000 USTs still need to be removed, replaced or upgraded. Although most of these tanks contain petroleum products, the impact to the public will be minimal as the majority of the tanks that have yet to comply with the law are located at trucking and transportation companies, hospitals, marinas, airports, and federal, state and local agencies.

In addition to being denied gasoline delivery, owners who miss the December 22, 1998 deadline will be subject to fines. If a petroleum release is discovered on the property after this deadline, owners who have not upgraded may be ineligible to receive reimbursement for cleanup costs from the State Water Resources Control Board Cleanup Fund.

Upgrades may include retrofitting an existing tank and piping with internal lining, corrosion protection, spill containment, overfill prevention equipment, striker plates and automatic pump shutdown capabilities. Replacing the tank with a new secondary tank system can also satisfy the requirement. Non-petroleum hazardous substances tank systems, like those containing waste oil or chemicals, may not be retrofitted. They must be replaced with secondary containment (double-walled) tank systems.

Upgrade work can still be done after the December 22, 1998 deadline without penalty if the tanks are emptied, temporarily closed and properly sealed prior to the deadline. Tank owners may then choose to replace, upgrade or permanently close the tanks during the temporary closure period.

COMMENTS

1. **Sponsor and Purpose.** This measure is sponsored by the author as follow up to his original underground storage tank new construction exclusion legislation (Senate Bill 933, Ch. 352, Stats. 1999). This bill is intended to ensure that tank work completed after December 31, 1988 will receive the benefit of the exclusion.

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2. **The Board of Equalization advised in its Letter to Assessors No. 99/22 and in its legislative analysis of SB 933 that the new construction exclusion would apply to work completed on or after the effective date of the legislation.** Since the effective date of the legislation, September 7, 1999, was after the date that underground storage tank work must have been completed, December 22, 1998, most property taxpayers who complied timely with the tank requirements did not benefit from the exclusion. This bill specifies the effective date of the exclusion in conformity with the author's intent to protect taxpayers from increased property taxes.
3. **The bill provides that the exclusion is declaratory of existing law as normal maintenance and repair.** The constitution does not define the term "new construction." Revenue and Taxation Code Section 70 defines certain "alterations" of property to be new construction and Property Tax Rule 473 excludes such alterations from the definition of new construction when they are performed for the purpose of normal maintenance and repair. The phrase "normal maintenance and repair" in Property Tax Rule 463 had not been used in statute prior to SB 933. The new construction exclusion for underground storage tanks is declaratory of existing law in that the pre-existing regulation excluding normal maintenance and repair work from property tax assessment was deemed to extend to underground storage tank work. Similar to existing property tax regulations that consider a replacement roof as normal maintenance and repair, SB 933 extended this concept to a replacement tank and therefore not assessable new construction.
4. **This bill would permit the exclusion to be retroactive for up to four prior tax years.** This bill would specify that the new construction exclusion apply to required tank work completed after December 31, 1988. However, taxpayers would only be relieved of associated increases in taxes for the last four tax years plus all future tax years. The number of prior tax years for which the exclusion could be granted is limited because of the statute of limitations on property tax refunds. Revenue and Taxation Code Section 5097 provides that a claim for refund must be filed within four years after making payment of the taxes sought to be refunded. Thus, with respect to prior tax years, this bill would effectively permit the new construction exclusion to be retroactively granted for up to four prior tax years, generally by means of refunding taxes previously paid.
5. **Statement of Public Purpose.** Since the legislation is declaratory of existing law and would result in refunds, a statement of public purpose may be useful, so as to not violate the constitutional provision prohibiting gifts of public funds.
6. **Administrative issues.** This bill would require that previous additions to assessments for tank work be extracted and reduced to their prior levels. In some cases, neither the assessor nor the taxpayer may have records dating back to 1988 to identify increases in assessments for tank work. Information on costs related to tanks, which are classified as fixtures, is generally reported each year on the business property statement.

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7. **This bill would define the term "tank" and "underground storage tank" by reference to Section 25299.24 of the Health and Safety Code.** This amendment would seem to limit the underground storage tank exclusion to those holding petroleum. Is the intent to also exclude work done to hazardous substance tanks? In addition, various definitions in Chapter 6.7 of the Health and Safety code seem to exclude certain underground storage tanks used on farms. Clarification may be helpful to ensure that certain tank work is not unintentionally disqualified from receiving the exclusion.

COST ESTIMATE

The Board would incur minor absorbable costs related to informing and advising local county assessors, the public, and staff of the law changes.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

State law and regulations required that underground storage tanks (UST's) storing petroleum and other hazardous chemicals that were installed before 1984 were to be removed, replaced or upgraded by December 22, 1998 to reduce the risk of hazardous material releases into the environment. The upgrade deadline was established by the U.S. Environmental Protection Agency in Fall 1988 and became a state requirement soon after. Since January 1, 1999, those petroleum UST's that have not been upgraded cannot be used to receive product.

Information from the counties shows that nearly all of the upgrades and replacements that will be done were completed by the deadline. The vast majority of the UST's that were installed before 1984 that were not replaced or upgraded by the deadline were removed, closed, or, in a few cases, abandoned.

Upgrading or replacing a UST required the removal of any structures, fixtures or equipment, including pumps, located above the tank. The tank would then be removed and a new tank installed or, usually in the case of an upgrade, the lining beneath the tank would be removed and a new lining installed.

The treatment of the UST upgrades as "new construction" varied from county to county. The different treatments can be categorized as follows:

- 1) Upgrades and replacements were treated as "new construction"
- 2) Upgrades and replacements were treated as normal repair and maintenance and not as "new construction."

Only the first treatment has a revenue impact under this proposal. Los Angeles County revalued the UST upgrades in 2000 under the first treatment; originally these had been valued as normal repair and maintenance. According to county estimates, this proposal

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would lower these assessed values by \$100 million. Assuming that Los Angeles accounts for one-half of the value affected by this proposal, the estimated total assessed value added for UST upgrades amounts to \$200 million statewide. The estimated annual revenue impact at the basic one percent property tax rate is then \$200 million x 1 percent, or \$2 million.

Under this proposal, if a structure was reconstructed, the reconstruction is not considered to be "new construction" if the structure after reconstruction is "substantially equivalent to the prior structure in size, utility, and function." Based on the information from the counties, staff is unable to identify any UST upgrade-related reconstruction meeting those criteria that were treated as "new construction".

For the larger stations, usually the only structures removed to gain access to the UST were the platforms for the pumps. After the tank was upgraded or replaced, new pumps were installed. Generally the new pumps are electronically controlled, fitted with the latest emission and safety features, and include a point-of-sale terminal.

Often for the smaller, older stations, the removal of the tank required the demolition of the station structure that housed the station office, the service garages, and restrooms. In some cases, especially with service garages no longer in use, the demolished station was replaced with only a cashier's booth and restrooms with, perhaps, a small convenience store or coin-operated car wash in place of the closed service garages.

Revenue Summary

The estimated annual revenue loss at the basic one percent property tax rate is \$2 million.

The estimated refunds for Los Angeles County for the one year that the UST's were revalued for "new construction" amount to \$100 million x 1 percent, or \$1 million. The maximum amount of refunds for up to 4 years for the other counties is then \$100 million x 1 percent x 4, or \$4 million. Statewide the maximum amount of refunds is then \$5 million.

Qualifying Remarks

The revenue impact may decrease over time as the service stations, or the property owners, change ownership.

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